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**MISCELLANY.**

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**BAR EXAMINATION.**

Richmond, Virginia, January 11, 1907.

1. State the doctrine in Virginia as to power of guardian to use principal of ward's estate, real or personal, for his maintenance and education.

2. (a) What are the several kinds of guardians in Virginia? (b) When does the wardship terminate? (c) What powers has the guardian in respect to the sale of the ward's personalty and realty respectively? (d) At what age are infants supposed to be capable of committing crime in Virginia? (e) At what age may they make wills of realty and personalty, respectively? (f) What is the precise time at which an infant attains the age of twenty-one? (g) Who inherits the lands of an infant derived from one of his parents; and who if derived from some other person?

3. Explain why a private statute is not properly a law, and also state five of the principal common-law rules for the construction of statutes.

4. What steps would you take if called upon to obtain a charter for and to organize a business corporation?

5. State the doctrine in Virginia as to mode in which a corporation may contract.

6. State the effect of the dissolution of a private corporation at common law, and also in Virginia.

7. Discuss the statutory changes which have been made from time to time in the law respecting the estate of a married woman, commencing with the Act passed in 1876-7, and what is the present status of the law on the subject?

8. State the terms of the rule in Shelley's Case, and the reasons of policy on which it was founded.

9. State method in Virginia of perfecting a mechanic's lien in favor of general contractors, and also sub-contractors; and how would you proceed to perfect and enforce such lien in a case where the contractor built house for A. upon land purchased from B., for which no deed had been made on account of fact that purchase money had only been partially paid B. having had nothing to do with the contract for building the house?

10. State the proper covenants of title to be inserted in a conveyance of lands, and which of them cannot pass to an assignee and why?

11. State the general mode in Virginia of summoning a non-resident defendant; how the fact of non-residence is made to appear; and the effect of a personal judgment obtained in this way.

12. What course should be taken by defendant against whom execution of fi. fa. is issued on judgment by default gotten three

years before upon process returned "Executed by leaving copy at defendant's residence?"

13. A master discharges his servant, employed for five years, in the middle of the second year without just cause? What are the remedies of the servant and what is he entitled to recover?

14. When are the declarations of an agent or servant admissible as evidence against his principal or master; and when is an agent's knowledge of facts notice to his principal?

15. (a) Give the disabilities which render marriage in Virginia void per se, without any sentence of divorce. (b) How are marriages dissolved? (c) Give the several kinds of divorce. (d) What courts have jurisdiction to grant divorces in Virginia? (e) The procedure in such cases? (f) Are husband and wife competent witnesses in such cases?

16. (a) What children are legitimate in Virginia? (b) Who is entitled to the custody of a legitimate child? (c) Who of an illegitimate child? (d) What is the doctrine in Virginia as to the capacity of bastards to inherit and to transmit inheritances?

17. A. and B., husband and wife, resided in the State of Pennsylvania. A., who is insolvent, owed C. \$100, and made a note therefor, with B. as surety. Under the laws of Pennsylvania, the note was not binding upon B. Afterwards, A. and B. removed to Virginia to reside, where B. owned property. What remedy, if any, has C. on the note against B., or her property?

18. Give definition of a remainder, and of an executory limitation, respectively, with an illustration of each; and give doctrine as to the effect of a devise to A. for life with remainder as to so much as he may not dispose of to B. in fee.

19. State nature of a joint tenancy, tenancy in common, and tenancy by entireties, respectively; and in what cases survivorship between joint tenants is still in force in Virginia.

20. What is direct evidence; what circumstantial; and what is hearsay evidence, and grounds on which it is excluded, with exceptions to the rule?

21. State doctrine as to vendor's liability for title and quality of chattels.

22. State the doctrine as to ademption in cases of general, specific, and demonstrative legacies, respectively, and give an illustration of each of these classes of legacies.

23. Define (1) a vested remainder; (2) a contingent remainder. What marked characteristic always distinguishes a vested remainder from one that is contingent? What kind of estate do the children take under the following clause of a will: "I give to my wife all of my estate for her natural life, and then to be divided among my children by will or otherwise as she (my wife) may deem best and right?" Give reasons for your view.

24. What must a vendee prove in order to obtain a rescission of

a contract upon the ground that it was procured by fraudulent representation of the grantor?

25. State the doctrine of resulting trusts; the circumstances under which it arises; the character of proof necessary to establish such a trust; whether parol proof is admissible for the purpose, and the court having jurisdiction of the subject.

26. Give the seller's remedy against the buyer in default (1) where the sale is executed and title and possession have passed, (2) where the title and possession remain with the seller, and the buyer wrongfully refuses to accept and pay for the goods, respectively. And also the measure of recovery in each case.

27. Give the doctrine as to the degree of dominion which one may exercise in respect to water flowing in a regular natural channel, in an artificial channel, in a subterranean channel, and surface water, respectively.

28. Give the doctrine, at common law, and also in Virginia, as to husband's marital interest in the wife's chattels personal, chattels real, choses in action, and revisionary interests, respectively.

29. A guardian wishes to sell the lands of his wards, some of whom are under 14 years of age, to re-invest the proceeds in other securities. By what proceeding and in what courts may it be done? Who are necessary parties complainant and defendant, respectively? State the various necessary steps in the case from its inception to its conclusion.

30. A., in building his house, failed to have his water-closet properly trapped, and connected his drain pipe with a city sewer. A gas pipe near the sewer leaked and illuminating gas escaped into A.'s building at night and killed him. His representative sued the gas company. What should be the judgment and why?

31. The Standard Oil Co. shipped a tank car of gas naphtha to X. in Richmond. X. sent a servant to unload the car by unscrewing a cap on a pipe and making a connection with X.'s private tank. The cap was defective, and in unscrewing it broke, the naphtha escaped and the gas therefrom coming in contact with a nearby furnace caused an explosion which killed the servant. His representative sued the Oil Company. What should be the verdict?

32. An engineer, in contravention of a statute, obstructed a public crossing by standing his train thereon. The horse of a person lawfully using the public highway, took fright at the appearance of the train and ran off and injured him. He sued the railroad company. What should be the judgment?

33. A city council, having power to abate nuisances, declares a house occupied by persons of bad character and used as a gambling dive to be a nuisance and has the same torn down. The owner sues the city for damages. What should be the judgment?

34. A railway company, in constructing its road, makes a fill across a ravine along which the surface water has been accustomed to flow

and causes the surface water to pond back to an adjacent landowner, who sued for damages. Can he recover (1) at common law, (2) under the civil law, (3) in Virginia?

35. Who is an independent contractor, and when is a person liable notwithstanding he employed an independent contractor?

36. An infant owner of a livery stable furnishes two teams to a picnic party. He drives one vehicle himself and one of his servants another. Both drivers get drunk and negligently allow their teams to run away and injure the occupants of the vehicle. The infant is sued for the resulting injury in each case. What should be the judgment?

37. A owns a field adjacent to a railroad. The field is covered with dry grass and weeds. It is burned by a spark emitted from a locomotive. What must A prove to entitle him to recover in the absence of countervailing proof, and what must the railroad company prove to avoid liability? If the fire were communicated from the company's right of way, what difference would there be in the proof required of each side?

38. Give the different views as to the liability of a railroad company in "turn-table" cases and which is correct on principle. What is the holding of the U. S. Supreme Court and of the Va. Court of Appeal respectively? Give the views of these two courts also as to the liability of a railroad company for an injury inflicted through its negligence upon a passenger riding on a free pass containing a release clause.

39. State the different kinds of felonious homicide, and give definition of murder in first degree in Virginia, and also of murder in second degree.

40. What are the several steps in regular proceedings against persons accused of crime?

### **List of Successful Applicants.**

Out of the class of sixty-four applicants forty-three passed the examination. The successful ones are as follows:

Anderson, James Holmes.....	University of Va.
Bullock, Otis W.....	Charlottesville, Va.
Brigham, E. Foster.....	Charlottesville, Va.
Bond, Napoleon.....	Richmond, Va.
Brooke, H. Lawrence.....	Norfolk, Va.
Burson, M. E.....	Bristol, Va.
Brown, E. Walton.....	Danville, Va.
Carter, E. M.....	Hill Station, Va.
Conrad, Laird L.....	Harrisonburg, Va.
Chichester, Cassius Moncure.....	Fredericksburg, Va.
Carter, Ellerbe W.....	Fredericksburg, Va.
Catler, P. S.....	Norfolk, Va.

Cary, Lucius F.....	Richmond, Va.
Clinkscales, J. E.....	Anderson, S. C.
Daniel, Edward M.....	Lynchburg, Va.
Ferguson, A. H.....	Winchester, Va.
Foreman, A. H.....	Norfolk, Va.
Faires, Clifford C.....	Charlottesville, Va.
Galt, H. B. G.....	Norfolk, Va.
Hubard, Robert T.....	Charlottesville, Va.
Harrison, Edmund Caskie.....	Richmond, Va.
Jones, James Paris.....	Newcastle, Va.
Joyner, Herbert Shepherd.....	Norfolk, Va.
Kizer, D. H.....	Lynchburg, Va.
Kelly, Emerson W.....	Wise, Va.
Keyes, W. W.....	Charlottesville, Va.
Kelsey, D. Arthur.....	Norfolk, Va.
Lewis, H. Stuart.....	University of Va.
McCandlish, F. S.....	Saluda, Va.
Rush, J. W.....	Fairfax, Va.
Robertson, A. Stuart.....	Staunton, Va.
Shackelford, Virginius R.....	Orange, Va.
Stump, Robert W.....	Fairfax, Va.
Strayer, Harry V.....	Harrisonburg, Va.
Visanska, Ernest L.....	Charlottesville, Va.
Wiggs, James O.....	Norfolk, Va.
Warth, H. Clay.....	Charlottesville, Va.
Way, L. B.....	Charlottesville, Va.
Woodhouse, Edward J.....	London Bridge, Va.
Walsh, Herman W.....	Charlottesville, Va.
Wallace, H. Lewis.....	Fredericksburg, Va.
Williams, Thomas J.....	Lynchburg, Va.
West, Eugene R.....	Charlottesville, Va.

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**The Law's Delay.**—The church and the state, the bench and the bar, the molders of public opinion and the followers of public opinion, and everybody else, may preach and bewail and do all sorts of things against lynchings; but we will continue to have lynchings until justice puts on the shoes of swiftness and vindicates the law. It is not the savagery of our people that occasions lynchings; it is the delay and defeat of justice in criminal prosecutions.

Your unscrupulous and cunning criminal lawyer is responsible for much of the lynching that has been perpetrated. He miscalculates his duty. His obligation to his profession, and his only obligation, is to see that no injustice is done his client; but he stretches that to mean, "get a verdict of not guilty at whatever cost—by deception, by cajolery, by corruption, by perjury, by plea to morbid sentiment, by anything that will receive acquittal." To-day there are thousands

and tens of thousands of unwhipped criminals at large in this country, plying their trade of crime. The wonder is that there are not ten lynchings where we now have one.

Justice in these free United States travels with leaden tread, and crime has warning and gets out of the way. Courts of criminal appeal sit solely to pick flaws in the conduct of trials in courts below where verdicts of guilty have been returned. Let the law be vindicated speedily and without delay, and crime will take to the woods, and as long as the law asserts its majesty, crime will go through the motion of behaving itself.

It is the certainty of punishment that curbs crime, it is the probability of immunity that augments crime. The people and their legislatures, the courts and the jurors, can curtail crime and stop lynching whenever they resolve to do so.

And not before. So what is the use of preaching?

—Washington Post.

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**"Ultra Vires" Borrowing and Surrogation.**—Fictions of law have still at times to be resorted to. A curious instance is furnished by the doctrine of surrogation. A company that has no power to borrow or has exhausted its borrowing power borrows money disregarding its disability. Of course we may look grave and say that the lender ought to have gone into the company's title, but there is much negligence in such matters—perhaps he was misled by the directors. Anyhow the result is that the company has had the money and is not chargeable with it. To make it chargeable would neutralize the salutary doctrine of *ultra vires*. So the lender finds himself cornered. But the company may have paid off creditors out of the loan or bought property with it. It generally has. Then the *deus ex machina* of a legal fiction descends on the stage. There is an imaginary scene—so says Lord Justice Fry, in *Baroness Wenlock v. The River Dee Company*—in which the quasi lender advances to the creditor the amount of his claim against the company, and takes an assignment of that claim for his own benefit. Thus the company does not borrow. It only changes its creditors; and lo! the knot is untied. The court in Ireland applied this principle in the case of *In re The Lough Heagh Ship Company*. The *ultra vires* borrowed money there had gone to pay off the balance of a debt due to a person for building a ship of the company, and the court allowed the lender to prove in the winding-up for the amount of the shipbuilders' debt; but why should not the lender be surrogated to the shipbuilders' lien as well as his debt in such a case? It seems the logical conclusion of the fiction.—*Australian Law Times*.